

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:13-CV-507-BO

DENNIS-WILLIAM IRVING,)
Plaintiff,)
)
v.)
)
FIDELITY MANAGEMENT AND)
RESEARCH)
Defendant.)
_____)

ORDER

This cause comes before the Court on the memorandum and recommendation of United States Magistrate Judge William A. Webb regarding frivolity review of plaintiff's complaint pursuant to 28 U.S.C. § 1915(e)(2). Plaintiff has objected to the memorandum and recommendation (M&R), and the matter is ripe for review. For the reasons discussed below, the Court adopts the M&R and dismisses plaintiff's complaint.

BACKGROUND

Plaintiff claims that he is seeking the return of 6.4 billion dollars, plus interest, from defendant. Plaintiff's complaint alleges a claim for breach of contract. Plaintiff is currently incarcerated, and seeks all information and funds pertaining to his CUIISP (Committee on Uniform Securities Identification Procedures) fund.

DISCUSSION

A claim proceeding *in forma pauperis* may be dismissed at any time if it is frivolous. 28 U.S.C. § 1915(e)(2)(B)(i). A complaint is frivolous if "it lacks an arguable basis either in law or fact." *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). To make a frivolity determination, a

court may designate a magistrate judge “to submit . . . proposed findings of fact and recommendations” for the disposition of a variety of motions. 28 U.S.C. § 636(b)(1)(B).

A district court is required to review de novo those portions of an M&R to which a party timely files specific objections or where there is plain error. 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140, 149-50 (1985). De novo review is not required when an objecting party makes only general or conclusory objections that do not direct a court to a specific error in the magistrate judge’s recommendations. *Orpiano v. Johnson*, 687 F.2d 44, 47 (4th Cir. 1982). Further, when “objections to strictly legal issues are raised and no factual issues are challenged, de novo review may be dispensed with.” *Id.*

The recommendation that this matter be dismissed is based upon plaintiff’s complete failure to make a short and plain statement of his claims, Fed. R. Civ. P. 8(a)(2), and the resulting failure to give defendant notice of the claim plaintiff is attempting to assert against them. *Conley v. Gibson*, 355 U.S. 41, 47 (1957), abrogated on other grounds by *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007). Plaintiff’s objection to the M&R points to no specific error in Judge Webb’s recommendation, but rather contends only that the “Magistrate seems to be overwhelmed with the claim for damages”


Because plaintiff has made no specific objections, the Court has reviewed the M&R for plain error and finds none. Even upon reviewing plaintiff’s complaint de novo, however, the Court finds that dismissal of this action as frivolous is appropriate.

CONCLUSION

For the foregoing reasons, the Court ADOPTS the M&R [DE 10]. Accordingly, for the reasons discussed therein, plaintiff’s complaint is hereby DISMISSED in its entirety. Plaintiff’s

remaining pending motion for discovery [DE 4] is DENIED AS MOOT.

SO ORDERED, this 17 day of September, 2013.



TERRENCE W. BOYLE

UNITED STATES DISTRICT JUDGE